IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

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WRIT PETITION Nos:7870 & 8033 of 1993

WP No.7870 of 1993

Between:

1.Divisional Mechanical Engineer,
S.E. Railway Staff Canteen or Exchange.
2.Md.Mouzam Saheb Yard Foreman, DEC or
Exchange Yard, Carriage Shed,
Kanchorapalem

..... PETITIONERS

AND

1.The Authority under Minimum Wages Act-Assistant Commissioner of Labour,
Circle-II, Akkayyapalem, Visakhapatnam.
2.The Asst. Labour Officer, Circle-V, Visakhapatnam-530 016.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction, particularly one in the nature of Writ of Certiorari declaring the order passed in MWC.No.151/316/91, dt.20-5-92 by the Court of Authority under Section 20 of the Minimum Wages Act (Asst. Labour Commissioner, Visakhapatnam) as illegal and void and quash the same.

For the Petitioners: MR.R.S.MURTHY, ADVOCATE.

For the Respondents: GP FOR LABOUR.

WP No.8033 of 1993

Between:

1.V.Pedambaraj, S.E Railway , Staff Canteen, Waltair.
2.G.S Swaroop, S.E Railway , Staff Canteen , Waltair.
3.KPA Kumar, S.E Railway , Staff Canteen, Waltair.

..... PETITIONERS

AND

1. The Authority Under Minimum Wages Act. Asst. Commissioner of Labour Circle II , Akkayyapalem, Visakhapatnam.
2.The Asst. Labour Officer Circle V, Visakhapatnam 16

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declaring the order passed in MWC No.150/315/91 on 20-5-92 by the court of authority U/.s 20 of the minimum Wages Ac, as illegal and void and quash the same.

For the Petitioners: MR.R.S.MURTHY, ADVOCATE.

For the Respondents: GP FOR LABOUR

The Court Made the Following:

ORAL COMMON ORDER:

Heard both sides.

2. Since the issue involved in both the writ petitions is being common, they are being disposed of by this common order.

3. The simple question that falls for consideration is – whether the ‘workmen’, working in the canteen situate in the premises belonging to the Railways, are to be treated as ‘employees’ of the canteen run by the Railways and – whether they are entitled to minimum wages?

4. The facts of the case, shorn of petty details, which are relevant and admitted, are that some of the employees have been running a canteen in the premises of the Railways, for their own facility and

convenience, and inasmuch as there was no canteen facility provided by the Railways, those workmen have formed into an Association, called the “Management Committee on Rotation Basis”, in order to run the said canteen, the object of which, it appears, was only to cater to the needs of the employees working inside the premises of the Railways and to avoid hardship and inconvenience to them to have a cup of tea or a snack.

5. The Authority under the Minimum Wages Act inspected the premises and the canteen and after conducting an enquiry directed the authorities of the Railways to pay minimum wages to the workmen working in the said canteen. Assailing the same, the instant writ petitions have been filed.

6. The specific contention of the Railways was that there was no canteen facility provided to the employees by the Railways at all at any time on its own, and that there was also no obligation cast upon the Railways to provide a canteen in the premises. Therefore, the employees on their own volition formed themselves into an association named and styled as “Managing Committee on Rotation Basis” and have been catering to the small needs of the employees. Therefore, it is contended that the said canteen cannot be called as a ‘canteen run by the Railways’ nor the employees working therein can be treated as the ‘employees’ of the Railways so as to attract the provisions of the Minimum Wages Act.

7. In this context, it is to be seen that in order to treat the Railways as the ‘principal employer’, there must be a direct or indirect nexus between the Railways and the employees working in the canteen, by which the Railways must be beneficiary of the services, if any,

rendered by any workmen working in the canteen. In the present case, it is to be seen that the Railways have never provided any canteen facility to its employees on their own and from out of their funds. There was no budget allocation made by the Railways in this behalf to maintain the canteen nor was there any provision of funds made by the Railways to meet the expenditure referable to the salaries of the workmen working in such canteen. The net result, obviously, is that the Railways have never undertook an obligation of running the canteen at any point of time. Therefore, this necessitated the workmen to organize a small canteen on their own for their own benefit.

8. It is to be further seen, as contended by the learned Government Pleader for Labour, appearing for the respondents, that it is the Railways, which have provided the facility of water and electricity free of cost to the canteen premises and, therefore, must be construed that the canteen is being run by the Railways only and consequently the workmen working in the canteen must be treated as employees of the Railways and are entitled for the minimum wages.

9. At the outset, this contention has to be rejected as unfounded. The two important questions that have to be examined are – *firstly,* who has been bearing the expenditure to run the canteen; and *secondly,* who is the pay master.

10. For both these questions, there is no definite answer indicating that the Railways are bearing expenditure for running the canteen and that the Railways are the pay master of the workmen working in the canteen. In other words, the Railways neither have been bearing the expenditure to run the canteen nor the canteen was established

by the Railways, or the salaries were being paid by the Railways to the workmen working in the canteen. The liberal gesture on the part of the Railways by providing the facilities like water and electricity free of cost to the canteen, that was being run by the employees by forming themselves into an Association and by engaging workmen in such canteen run by them, does not, by itself, mean that the workmen working in the canteen are the 'employees' of the Railways, and that the Railways are the 'employer' of such workmen so as to clothe such persons, working in the canteen run by the employees, the right to claim minimum wages. From out of the said charity or good gesture extended by the Railways, the workmen cannot expect or gain more than what they deserve nor the status of the Railways, in relation to such workmen working in the canteen, gets enhanced to the status of an employer so as to oblige the Railways to pay the minimum wages to such workmen working in the canteen.

11. It is to be further seen that the very nomenclature of the canteen, viz., 'Managing Committee on Rotation Basis' itself denotes that there is no fundamental and permanent authority controlling the affairs of the canteen nor is it the case of the respondents that the Railways are under an obligation, either under the statute, or under any other Rules, to establish a canteen for the benefit of the workmen.

12. For the foregoing reasons, the impugned orders passed by the first respondent are liable to be set aside and accordingly they are set aside.

13. In the result, both the writ petitions are allowed and the impugned orders are set aside. However, there shall be no order as to costs.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday the seventeenth day of June two thousand and four.

17TH JUNE 2004 D.S.R.VARMA, J

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To:

1.The Authority under Minimum Wages Act-Assistant Commissioner of Labour, Circle-II, Akkayyapalem, Visakhapatnam.
2.The Asst. Labour Officer, Circle-V, Visakhapatnam-530 016.

3.Two CCs to Government Pleader for Labour, High Court Buildings, Hyderabad (OUT).

4.Two CD copies.

5.One spare.